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Nos. 99-224 and 99-582

In the Supreme Court of the United States

CHARLES B. MILLER, ET AL., PETITIONERS

v.

RICHARD A. FRENCH, ET AL.

UNITED STATES OF AMERICA, PETITIONER

v.

RICHARD A. FRENCH, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

SETH P. WAXMAN
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

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The State and respondents both argue (State Br. 13-18; Resp. Br. 30-34) that a district court presented with a termination motion under the Prison Litigation Reform Act of 1995 (PLRA), 18 U.S.C. 3626(b) (Supp. IV 1998), does not have equitable authority to suspend the automatic stay and thereby preserve the status quo

until it rules on the termination motion. Under the State's and respondents' interpretation of the Act, even if the termination motion cannot be resolved within 90 days, and even if plaintiffs establish that a stay of the court's outstanding orders would cause them irreparable injury and that the termination motion is likely to be defeated, a court could not suspend the automatic stay.

That interpretation fails to give appropriate weight to the established background principle that courts retain their traditional authority to issue equitable relief, "[a]bsent the clearest command to the contrary from Congress." *Califano* v. *Yamasaki*, 442 U.S. 682, 705 (1979); see also *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 398 (1946) ("Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied."). As the Fifth and Sixth Circuits have concluded, because federal courts have always enjoyed equitable authority to preserve the status quo pending resolution of cases before them, and because the automatic stay provision does not clearly and unequivocally remove that authority, courts presented with a termination motion have authority to suspend the automatic stay under traditional equitable standards. *Ruiz* v. *Johnson*, 178 F.3d 385, 394 (5th Cir. 1999); *Hadix* v. *Johnson*, 144 F.3d 925, 938 (6th Cir. 1998).

The State argues (Br. 17) that, "in light of the clear statutory language making the stay automatic, the legislative history, and the manifest purpose of § 3626(e)(2), no further congressional statement limiting district courts' general equitable authority is necessary." Respondents similarly argue (Br. 34) that Congress's intent to preclude equitable relief "appears

to be clear." The materials cited by the State and respondents, however, do not show that Congress intended to strip federal courts of their equitable authority to preserve the status quo pending resolution of cases before them, much less that Congress "unequivocally" intended such a "drastic departure from the traditions of equity practice." See *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944). Instead, the text, legislative history, and evident purpose of the automatic stay provision are all fully consistent with a court having residual authority to maintain the status quo by suspending the automatic stay under traditional equitable standards.

A. Statutory Text

1. The State contends (Br. 14) that Congress's characterization of the stay as "automatic," 18 U.S.C. 3626(e) (Supp. IV 1998), demonstrates that courts lack authority to preserve the status quo by suspending the statutory stay. "Automatic," however, means self-acting, not unstoppable. *The American Heritage Dictionary of the English Language* 125 (3d ed. 1992) (definition 1); *Webster's Third New International Dictionary* 148 (1976) (definition 3). The statutory stay satisfies that definition because it takes effect and continues to operate without any *affirmative* judicial action. See 18 U.S.C. 3626(e)(2) (Supp. IV 1998) ("Any motion * * * shall operate as a stay during the period beginning on the 30th day after such motion is filed * * * and ending on the date the courts enters a final order ruling on the motion."). That automatic feature of the stay, however, does not imply, much less necessarily and inescapably imply, that a court lacks authority to suspend it. Washing machines, car transmissions, and airplane steering mechanisms operate auto-

matically, but a person may intervene to suspend their operation. The same is true of the automatic stay.

If the State's understanding of the meaning of "automatic" were correct, it would be an oxymoron to say that a court has authority to suspend an automatic stay. As the State recognizes, however, the PLRA itself expressly authorizes a court to postpone the automatic stay for good cause for 60 days. 18 U.S.C. 3626(e)(3) (Supp. IV 1998). The Bankruptcy Act similarly authorizes a court to "terminat[e], annul[], modify[], or condition[]" the automatic stay effected by a bankruptcy petition. 11 U.S.C. 362(d). Those statutory provisions reinforce the conclusion that "automatic" simply does not mean "incapable of being suspended."

2. The State and respondents similarly err in relying (State Br. 14; Resp. Br. 32) on the term "shall" in the phrase "any motion * * * shall operate as a stay * * * beginning on the 30th day after such motion is filed." 18 U.S.C. 3626(e)(2) (Supp. IV 1998). That statutory language does not refer to a court's authority at all, much less demonstrate a clear and unequivocal intent to strip a court of its ordinary equitable authority. Instead, it serves an entirely different purpose. It is equivalent to saying that, "after 30 days, a termination motion is to be legally regarded as a stay, even though it is only a motion."

That natural reading of the statutory text refutes the argument that the automatic stay provision strips a court of authority to suspend the automatic stay. There is absolutely no inconsistency between a court and the parties being obliged to regard a termination motion as a "stay" and a court having authority to suspend the operation of such a "stay." To the contrary, since a court has authority to suspend an ordinary stay under traditional equitable standards, the logical implication

of requiring a termination motion to be regarded as a stay is that a court has authority to suspend that stay under traditional equitable standards as well.

That reading of the "shall operate as" language is consistent with Congress's use of the phrase in other statutes. For example, a provision concerning judicial review of a live poultry order of the Secretary of Agriculture states that "[i]f the court of appeals affirms or modifies the order of the Secretary, *its decree shall operate as an injunction* to restrain the live poultry dealer * * * from violating the provisions of such order or such order as modified." 7 U.S.C. 228b-3(g) (emphasis added). The underlined phrase makes clear that the court's decree is to be legally regarded as an injunction, even though it is only a decree. It does not suggest, however, that a court of appeals would lack authority to suspend the operation of that injunction under traditional equitable standards. Other provisions also illustrate that Congress uses "shall operate as" to require something that is not a stay or an injunction to be treated as such, not to strip a court of its traditional equitable authority.[1]

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[1] 7 U.S.C. 194(g) ("If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer * * * from violating the provisions of such order or such order as modified."); 15 U.S.C. 80a-42(b) ("The commencement of proceedings under subsection (a) of this section to review an order of the Commission * * * shall operate as a stay of the Commission's order unless the court otherwise orders."). Congress also uses the phrases "shall not operate as" and "does not operate as" to make clear that something that is not a stay should not be treated as one. See 5 U.S.C. 7123(c) ("The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay."); 28 U.S.C. 2349(b) ("The filing of the petition to review does not itself stay or suspend the operation of

This Court's decision in *Honig* v. *Doe*, 484 U.S. 305 (1988), also demonstrates that the use of the term "shall" in the automatic stay provision is not incompatible with a court having authority to suspend the automatic stay. The "stay-put" provision at issue in *Honig* specified that, during the pendency of any action challenging a school district's educational placement decision, and absent agreement between the parties, "the child shall remain in the then current educational placement of such child." *Id.* at 312. That provision, the Court held, "in no way purports to limit or pre-empt the authority conferred on courts [to issue equitable relief]." *Id.* at 327. Instead, it "effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others." *Id.* at 328.

The automatic stay provision has a similar import. It effectively creates a presumption in favor of a stay of outstanding orders which plaintiffs ordinarily can overcome only by showing that such a stay is likely to cause irreparable injury and that the termination motion is likely to be defeated. To read anything more into the automatic stay provision ignores both the ordinary meaning of the statutory text and the settled principle

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the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition."); 5 U.S.C. 1508 ("The institution of the proceedings does not operate as a stay of the determination or order unless * * * the court specifically orders a stay; and the officer or employee is suspended from his office or employment while the proceedings are pending.").

that courts retain their equitable authority unless Congress has clearly and unequivocally displaced it.

3. One of the State's supporting amici relies (Washington Legal Foundation Br. 8) on the automatic stay provision's specification of a beginning point and ending point as a basis for reading it to strip a court of its ordinary equitable authority. But that specification simply tracks the ordinary period for court-ordered interlocutory relief—from the moment it comes into existence until the court rules on the merits. Such a specification does not suggest that a court lacks authority to suspend the stay. For example, when a court issues an order stating that "the court hereby stays prior orders of this court pending a decision on the merits of the termination motion," it surely retains authority to suspend the stay based on traditional equitable standards. The same is true of the automatic stay.

4. Contrary to the State's contention (Br. 13), our interpretation does not read the automatic stay provision out of the statute. Absent that provision, defendants would have the burden of establishing irreparable injury and likelihood of success in order to obtain a stay of outstanding orders. *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). Even if defendants made such a showing, a court would still have discretion to decline to issue a stay based on the hardship to plaintiffs and the public interest. *Yakus* v. *United States*, 321 U.S. 414, 440 (1944).

The automatic stay provision relieves defendants of the burden of establishing the prerequisites for a stay, and eliminates a court's discretion to decline to issue a stay based on other factors. Under the automatic stay provision, the motion itself operates as a stay, and a court ordinarily may suspend the stay only if plaintiffs

can establish the traditional prerequisites for injunctive relief. Because it is often difficult to establish the essential prerequisites for injunctive relief at a preliminary stage in the proceedings, and because courts often do not award injunctive relief even when the essential prerequisites for such relief have been established, that change in the law is significant.

B. Related Provisions

1. The interpretation offered by the State and respondents is not assisted by the provision authorizing a court to postpone the automatic stay for good cause for no more than 60 days. 18 U.S.C. 3626(e)(3) (Supp. IV 1998). According to the State and respondents (State Br. 14; Resp. Br. 32), that provision indicates that no additional extension is permitted under the law for any reason. The State and respondents read far too much into the good cause provision.

Good cause is a generous standard that permits a postponement of the stay on the basis of a wide variety of factors affecting a court's ability to resolve the termination motion within 30 days, including a counsel's scheduling conflict, the need for discovery, and other similar factors. See U.S. Br. 21. Congress's allowance of no more than a 60-day postponement under that generous standard does not imply, and certainly does not necessarily and inescapably imply, that no further suspension of the stay is warranted when a plaintiff can satisfy the far more demanding standards for obtaining equitable relief. To the contrary, Congress's limitation of "good cause" postponements to 60 days, while failing to provide that a court lacks additional authority to suspend the stay under traditional equitable standards, confirms that the latter authority remains intact.

2. The State and respondents also fail to account adequately for the provision in the Act authorizing an appeal from a denial of an order suspending the automatic stay. 18 U.S.C. 3626(e)(4) (Supp. IV 1998). As the Fifth and Sixth Circuits have concluded, it is unlikely that Congress would have provided for ordinary interlocutory appellate review of district court orders suspending the stay if it intended to strip courts of any authority to issue such a stay. *Ruiz*, 178 F.3d at 394; *Hadix*, 144 F.3d at 938.

If, as the State believes (Br. 14-15), Congress intended to strip courts of any authority to suspend the automatic stay, but harbored a concern that district courts might nonetheless continue to issue such orders, Congress likely would have enacted a review provision that resembles Section 3626(e)(1). In that provision, Congress provided *first*, that "[t]he court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions," and *second*, that "[m]andamus shall lie to remedy any failure to issue a prompt ruling." 18 U.S.C. 3626(e)(1) (Supp. IV 1998). If Congress wanted to achieve the result suggested by the State, it could have drafted a parallel provision specifying *first* that "other than the authority to postpone the automatic stay for good cause under 18 U.S.C. 3626(e), a court shall have no authority to suspend the automatic stay," and *second*, that "mandamus (or an appeal) shall lie to correct any such order."

Congress's failure to adopt that approach and its adoption instead of a provision authorizing immediate appellate review of orders suspending the stay without specifying any standard of review is significant. It strongly suggests that Congress intended to leave a district court's traditional equitable authority intact,

subject to appellate review under the established abuse of discretion standard.

One of the State's supporting amici argues (National Governor's Association Br. 15) that the appellate review provision has the limited purpose of overriding the Fifth Circuit's decision in *Ruiz* v. *Scott*, No. 96-21118 (Aug. 6, 1997), and making clear that an order declaring the automatic stay provision unconstitutional is appealable; see also State Amicus Br. 12. *Ruiz*, however, held only that an order refusing to grant an immediate termination motion without a hearing is not appealable. Slip op. 15-18. It did not hold that an order declaring the automatic stay unconstitutional is unappealable. *Id.* at 18-20. Moreover, the text of the appeal provision does not reflect that its sole purpose is to authorize appeals from orders declaring the automatic stay unconstitutional. It broadly authorizes appeal of any order "staying, suspending, delaying, or barring the operation of the automatic stay," 18 U.S.C. 3626(e)(4) (Supp. IV 1998), and the one thing it does not expressly authorize is an appeal from an order that simply "declares the automatic stay unconstitutional."

Respondents contend (Br. 33-34) that Congress's failure to authorize plaintiffs to appeal from orders refusing to suspend the automatic stay casts doubt on the claim that Congress contemplated such injunctions. But the PLRA reflects Congress's concern that district courts had gone too far in granting relief to plaintiffs in prison litigation cases, not that they had failed to go far enough. It is therefore hardly surprising that Congress expressly authorized prison authorities to appeal from orders suspending the automatic stay, while leaving plaintiffs with whatever appellate rights existing law already provides.

C. Legislative Purpose

1. The State argues (Br. 15-17) that the purpose of the automatic stay provision is to provide an incentive for courts to rule promptly on a termination motion, and that, if a court has authority to suspend the automatic stay for more than 60 days, it would defeat that purpose. Under our interpretation, however, a court may suspend the automatic stay only in limited circumstances. As discussed above, under our interpretation, a court has authority to suspend the stay only if the termination motion cannot be resolved in 90 days and plaintiffs establish the prerequisites for equitable relief. Moreover, if a court issues a suspension order that is not justified under traditional equitable standards, prison authorities may obtain prompt appellate review under Section 3626(e)(4). And when a suspension order is justified, but a court fails to issue a prompt ruling, prison authorities may obtain mandamus to compel a prompt ruling. 18 U.S.C. 3626(e)(1) (Supp. IV 1998). Interpreting the automatic stay provision to permit a court to suspend the automatic stay therefore does not threaten Congress's goal of encouraging district courts to rule promptly on termination motions.

2. The State's legislative purpose argument also ignores a second, important purpose of the PLRA—to ensure that relief that is necessary to remedy a constitutional violation is not terminated prematurely. See 18 U.S.C. 3626(b) (Supp. IV 1998) (court shall not terminate relief that is necessary to remedy a violation of federal law); see also U.S. Br. 24-25 (discussing the drafting history of Section 3626(b)(3)). In our experience litigating termination motions, if the parties and the court work together, motions to terminate prison decrees that affect a single institution can

ordinarily be resolved within 90 days. Decrees that affect numerous institutions throughout a State, however, present a greater challenge. Even under the best of circumstances, it may not be possible to resolve a termination motion in such cases within 90 days.

In those cases that cannot be finally resolved within 90 days, if plaintiffs can show that a stay would cause irreparable injury and that they are likely to defeat the termination motion, a suspension of the stay would serve Congress's purpose of avoiding premature termination of relief that is necessary to remedy a constitutional violation. In contrast, the State's interpretation would frustrate that purpose.

One of the State's supporting amici argues (Washington Legal Foundation Br. 12 & n.3) that, in cases that cannot be resolved in 90 days, a court can enter a 90-day preliminary injunetion pursuant to 18 U.S.C. 3626(a)(2) (Supp. IV 1998). That provision, however, is in the part of the PLRA that addresses cases seeking new relief, not in the part of the Act that addresses termination of existing relief, and the two parts of the Act have distinct requirements. The preliminary injunction provision therefore applies only to requests for new relief. Amici's effort to stretch Section 3626(a)(2) to apply to termination motions, however, demonstrates their recognition that the State's interpretation of the automatic stay provision would defeat Congress's goal of avoiding premature termination of relief that is necessary to remedy a constitutional violation.

D. Avoidance Of Constitutional Question

1. The interpretation offered by the State and respondents also fails to accord with the principle that a court should avoid a construction of an Act of Congress

that would create a serious constitutional question when, as here, an alternative construction is possible. Their construction raises the serious constitutional question whether Congress violates Article III when it provides for the suspension of a final judgment of a court by operation of law without any judicial involvement in, or control of, the suspension decision. That question is a serious one because this Court in *Plaut* v. *Spendthrift Farm Inc.*, 514 U.S. 211, 226 (1995), quoted with approval Judge Iredell's statement in *Hayburn's Case*, 2 U.S. (2 Dall.) 409, 413 n.† (1792) (emphasis added), that "no decision of any court of the United States can, under any circumstances, . . . be liable to a revision, or *even a suspension*, by the Legislature itself, in whom no judicial power of any kind appears to be vested."

The constitutional question is particularly difficult because the automatic stay provision applies to pre-existing decrees. Because of that feature, the State's and respondents' interpretation invites the argument that the automatic stay provision not only effects a legislative suspension of court decisions, but does so based on congressional disagreement with the way the courts applied then-existing law to the facts of particular cases. We know of no other statute that raises the constitutional question that would be presented by the State's and respondents' interpretation. See U.S. Br. 34-37; see also p. 5 & note 1, *supra*. Nor does any decision of this Court conclusively resolve that question.

To avoid the serious constitutional question presented by the State's and respondents' interpretation, the automatic stay provision should be construed to permit a court to suspend the stay under traditional equitable standards. Because that interpretation gives

the court ultimate control over whether its judgment will be suspended, it does not pose any serious Article III question.

2. The State and respondents argue (State Br. 15; Resp. Br. 34) that the doctrine of avoiding serious constitutional questions does not apply because the automatic stay provision makes it clear that a court does not have authority to suspend the stay. See *Edward J. Debartolo Corp.* v. *Florida Gold Coast Bldg. & Constr. Trades Council*, 485 U.S. 586, 575 (1988) (principle of constitutional doubt does not apply if it would require a construction that is "plainly contrary to the intent of Congress"). As we have explained above, however, the automatic stay provision can readily be interpreted not to foreclose a court's authority to suspend the automatic stay. That is particularly true when it is read against the background principle that courts retain their traditional equitable authority absent the clearest congressional command to the contrary.

The State also argues (Br. 18) that the "statute need not be * * * construed" to permit equitable suspension because the State's alternative construction "suffers no constitutional infirmity." But the doctrine of constitutional avoidance applies when a construction of a statute would create a *serious* constitutional question. See *DeBartolo*, 485 U.S. at 575. Nothing in the State's defense of the constitutionality of its interpretation suggests that the constitutional issue is not a serious one. The principle that interpretations that raise serious constitutional questions should be avoided is therefore fully applicable, and reinforces the conclusion that the automatic stay provision should be interpreted to permit a court to suspend the automatic stay under traditional equitable standards.

E. Constitutionality Of The State's And Respondents' Construction

While the constitutional question raised by the State's and respondents' interpretation is a serious one, we do not share respondents' view that the automatic stay provision would be unconstitutional if construed to foreclose equitable suspension of the automatic stay. Thus, if the Court rejects our interpretation of the automatic stay provision and accepts the interpretation offered by the State and respondents, it should still uphold the constitutionality of the automatic stay provision. Before explaining why we believe the serious constitutional problem we have identified is not fatal, we first address two other constitutional objections raised by respondents.

1. Respondents argue (Br. 13-19) that, as construed by the State and them, the automatic stay provision violates Article III, because it interferes *retroactively* with a final decision *without a relevant change in the law*. Both of the predicates of that argument are incorrect.

While the automatic stay provision applies to final judgments issued before the PLRA's effective date, it stays only the "prospective relief" in such judgments. 18 U.S.C. 3626(e)(1) (Supp. IV 1998). That limitation undermines respondents' argument that the automatic stay provision operates retroactively. When a statute only "affects the propriety of prospective relief, application of the new provision is not retroactive." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 273 (1994); see also *American Steel Foundries* v. *Tri-City Trades Council*, 257 U.S. 184, 201 (1921) (explaining that "relief by injunction operates *in futuro*" and that plaintiffs do

not have a "vested right" to prospective relief in the decrees entered by a district court).

That is why the Court in *Plaut* had no difficulty distinguishing the statute upheld in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1885), from the statute invalidated in *Plaut*. The statute in *Wheeling Bridge*, the Court explained, "altered the prospective effect of [an] injunction[] entered by [an] Article III court[]," *Plaut*, 514 U.S. at 232, and therefore did not implicate the principle that Congress may not enact retroactive legislation requiring a court to set aside a final judgment, *id.* at 240.

The automatic stay provision also makes a relevant change in the law. Before Congress enacted the automatic stay provision, a party filing a motion to terminate prospective relief was required to appeal to the equitable discretion of the court to obtain a stay of that relief pending a final decision on the motion. The automatic stay provision changed the law governing such stays. Under our interpretation, the applicable change is that a stay occurs after 30 (or 90) days, unless the plaintiff can satisfy the prerequisites for obtaining an equitable suspension. Under the State's and respondents' interpretation, the applicable change is that a stay occurs after 30 (or 90) days and ends when a court issues a ruling on the merits of the termination motion. Under either interpretation, the automatic stay provision changed the law governing such stays. We therefore disagree with respondents' contention that the automatic stay provision, as construed by the State and them, retroactively interferes with a final judgment without a change in the underlying law.[2]

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[2] Respondents argue (Br. 16-17 & n.3) that Congress can affect prospective relief only when it makes a change in *substantive* law.

2. Nor do we share respondents' view (Br. 20-24) that the interpretation offered by the State and respondents would make the automatic stay provision unconstitutional under *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871). At most, *Klein* stands for the proposition that Congress may not require a court to decide a pending case in a particular way without changing the underlying law. *Id.* at 146; see *Robertson* v. *Seattle Audubon Soc'y*, 503 U.S. 429, 441 (1992) (noting court of appeals' view that *Klein* forbids Congress from "directing decisions in pending cases without amending any law"). The automatic stay provision does not direct the court to decide a termination motion in any particular way. Instead, it affects only whether prospective relief in a prior judgment will remain in effect during the period beginning 30 days after a termination motion is filed and ending when the court independently decides whether the motion should be granted. See *Hadix*, 144

Since the PLRA did not (and could not) change the substantive Eighth Amendment law governing prison conditions, respondents argue, it may not be applied constitutionally to the prospective relief in decrees entered before its effective date. That argument, which would also invalidate the *termination* provision's application to preexisting judgments, is incorrect. Even when Congress does not alter substantive law, Congress may, within broad constitutional limits, change the law governing equitable remedies for violations of the substantive law, and require such a change in remedial law to be applied to prospective relief in preexisting judgments. Thus, as the courts of appeals have uniformly concluded, Congress had authority to limit equitable remedies for violations of the Eighth Amendment to relief that extends no further than necessary to remedy the violation, and to require prospective relief in preexisting judgments to conform to that new remedial standard. See U.S. Br. 32 (citing cases).

F.3d at 940 (automatic stay provision "does not mandate a rule of decision").

Respondents argue (Br. 23-24) that, as construed by the State and them, the automatic stay provision violates *Klein* because it instructs courts to enter a "provisional" decision in the government's favor. That argument is unpersuasive for two reasons. First, the automatic stay provision does not instruct a district court to enter a decision or perform any other judicial function; instead, it transforms a party's motion into a stay by operation of law. Second, as discussed above, the automatic stay provision changes the law governing stays pending the resolution of termination motions, and *Klein's* "prohibition does not take hold when Congress amend[s] applicable law." *Plaut*, 514 U.S. at 218; see also *Robertson*, 503 U.S. at 438, 441 (finding no violation of *Klein* after determining that statute compelled changes in law, not findings or results under old law).

3. That leaves the serious constitutional objection that we have already identified—that the automatic stay, as interpreted by the State and respondents, impermissibly effects a legislative suspension of a final decision of a court without judicial involvement in, or control of, the suspension decision. For the following reasons, we believe that this objection, while serious, is not fatal.

First, a significant number of termination motions are capable of being resolved within 90 days. In those cases, a court has control over whether its judgment will be suspended.

Second, the automatic stay provision is a component of a broader scheme in which Congress has changed the law that applies to the issuance of equitable relief in prison conditions cases, provided that the prospective

relief in preexisting decrees must conform to those new equitable standards, and left it to the courts to decide whether the relief in preexisting decrees satisfies the new standards. As the courts of appeals have concluded, that broader scheme falls within Congress's authority under *Wheeling Bridge* to affect prospective relief in preexisting decrees. See U.S. Br. 32 (citing cases).

Third, the automatic stay provision applies not only to preexisting decrees, but also to post-PLRA decrees. It therefore resists characterization as simply a congressional effort to suspend particular decisions with which Congress disagrees.

Fourth, Congress has broad power not only to guide a court's exercise of equitable discretion, but to "control" it. *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982). Congress has authority to foreclose a court from issuing equitable relief to preserve the status quo, *Yakus*, 321 U.S. at 441-444, and to require a court to issue equitable relief when certain facts are found, *TVA* v. *Hill*, 437 U.S. 153, 197-198 (1978). Those cases would seem to provide support for a statute that requires a court to grant a stay of its orders within 30 days of the filing of a termination motion pending a final decision on the motion. And, in functional terms, there is little difference between such a statute and one that effects a temporary suspension of a decision by operation of law.

Finally, given its context, Judge Iredell's statement can reasonably be limited to situations in which Congress exercises judgment in individual cases concerning whether a decision should be suspended. In such circumstances, Congress can only be understood as exercising judicial power. When, as here, Congress enacts a rule of law for an entire class of cases, and that

law affects only prospective relief, it can reasonably be viewed as exercising legislative power.

These points do not show that the constitutional issue presented by the State's and respondents' interpretation is not extremely serious. But on balance, we believe they are sufficient in combination to sustain the constitutionality of that interpretation.

4. There is no need, however, for the Court to decide the constitutional question presented by the State's and respondents' interpretation. Because the automatic stay provision is best read to permit a court to suspend the automatic stay under traditional equitable standards, and because that construction avoids a serious constitutional question, the Court should adopt that construction.

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For the reasons discussed above, as well as those in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

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